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ABSTRACT

This report is a model for state legislation for child abuse and neglect. This model act was designed to meet the requirements outlined in Public Law 93-247 which was enacted by the federal government in 1974. The model is outlined with sections covering every aspect of child abuse and the law. Each section also includes a commentary which discusses the purpose of that section, and explains particular points in greater detail. The bibliography of the report cites law review articles, books, medical articles, and public documents concerning child abuse. (MPJ)

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Child Abuse and Neglect:

Model Legislation for the States

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Child Abuse and Neglect Project
Education Commission of the States

Report No. 71
March 1976

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Child Abuse and Neglect:

Model Legislation for the States

Report Number 71
Child Abuse and Neglect Project

Education Commission of the States
Denver, Colorado 80203
Wendell H. Pierce, Executive Director

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The photograph on the cover was taken by Eric Morey, a graduate of the University of Colorado and the University of Chicago, who is currently working as a freelance photographer in Denver.

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Brian Fraser, staff attorney for the National Center for the Prevention and Treatment of Child Abuse and Neglect and faculty member in the Department of Pediatrics at the University of Colorado, has worked closely with the staff of the Early Childhood Project and the ECS Child Abuse and Neglect Project to provide assistance to the states in the area of child abuse and neglect. In 1973 he prepared model legislation for publication by the Early Childhood Project and that legislation has been adopted, in varying degrees, in approximately a dozen states during the past year and a half. Other states have the proposed legislation under active consideration. Fraser is also project director of the National Center's Region VIII Child Abuse and Neglect Resource Demonstration Project.

Because of new federal legislation, and because of new developments in the states, Fraser consented to update his earlier legislation for the project. His efforts represent current thinking and promising practices in existence in state legislation concerned with child abuse and neglect. Professor Besharov provided a critical examination of the manuscript and collaborated with Fraser in completing the final document. The staffs of the ECS Early Childhood and Child Abuse and Neglect Projects are extremely appreciative of the research effort that has gone into this publication and delighted to have this opportunity to provide it to state officials and to the general public.

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INTRODUCTION

In December 1973 The Early Childhood Task Force of the Education Commission of the States (ECS) published its first model legislation for child abuse and neglect. Since then, a number of states have adopted in part or in whole its suggested language.

In January 1974 the federal government enacted Public Law 93-247, which outlined certain requirements each state must meet to be eligible for federal funding. Accordingly, ECS has asked Brian Fraser[1] to revise his first model legislation to meet the requirements of the new federal guidelines, and is now in its second printing under the auspices of the ECS Child Abuse and Neglect Project. This model act, the work of Mr. Fraser in conjunction and after consultation with Douglas Besharov,[2] meets the requirements of Public Law 93-247. It has been constructed from the original language of the commission's first model to meet the contingencies and problems states will encounter in this area over the next decade.

Today, all 50 states and Washington, D.C., Puerto Rico and the Virgin Islands have statutes requiring that physical abuse of children be reported to some state agency. Many of these laws, however, are

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limited in scope and, consequently, impact. Child abuse continues to be a major unresolved national problem. The general purpose of this suggested legislation is to encourage state legislators to review their existing laws and revise them where appropriate in order to deal more effectively with child abuse and neglect.

It is conservatively estimated that at least 60,000 children -- for the most part under the age of 3 -- are seriously physically abused each year. Seven hundred die at the hands of their parents. If the definition of child abuse is expanded to include sexual molestation, neglect and emotional abuse, the estimates increase astronomically.

Moreover, child abuse is not a single assault, but repeated assaults on the same child, growing more severe the longer the abuse continues. The damage, both physically and psychologically, is cumulative. The longer the abusive behavior continues unchecked, the greater the chance of serious and permanent disability to the child.

Child abuse is conditioned behavior learned from parents and passed along from one generation to the next.

Obviously, all the complex factors driving a parent to abuse or neglect a child cannot be dealt with adequately in a single piece of legislation. There is a growing awareness that laws identifying the abused child and the abusing parent must be coupled with treatment programs. Further, it must be recognized that there is no single agency, either public or private, that can offer all the services necessary for the identification, treatment and prevention of child abuse and neglect.

Child abuse and neglect are multidisciplinary problems that must be attacked from a multidisciplinary point of view. All community services and all community treatment programs must be fully utilized. Most critically, we must foster communication, coordination and cooperation between all community resources.

The specific purposes of this suggested legislation are:

1. To encourage complete reporting of suspected child abuse and neglect cases by all persons who have contact with young children.
2. To encourage a therapeutic and treatment-oriented approach to child abuse and neglect, rather than a punitive approach.
3. To encourage uniformity in terms and concepts and to encourage communication and cooperation among states.
4. To enable each state to meet the requirements of Public Law 93-247.

Even if this suggested legislation were enacted in the form outlined here, there are two complementary efforts that each state must undertake to maximize the impact of the law. First, education and training must be made available for all persons dealing with child abuse and neglect. Second, there must be an effective utilization of all forms of media to identify the problems and needs in the area of child abuse and neglect. However, a word of caution is in order. There is little value, and perhaps much danger, in saturating the public with tales of the evils of child abuse and neglect. Public awareness to

increase reporting, solely for the sake of reporting, is counter-productive. If the media is to increase the number of reports, each state must be prepared to offer services and treatment to those so identified.

Federal Impact

On January 31, 1974, Public Law 93-247 was enacted into law. The primary purpose of this law is to provide federal financial assistance for the prevention, identification and treatment of child abuse and neglect. For a state or its political subdivisions to qualify for funding under PL 93-247, ten requirements must be met:

1. A state must provide for the reporting of known or suspected instances of child abuse and neglect.
2. A state must provide, upon the receipt of a report of known or suspected child abuse or neglect, an investigation of that report by a properly constituted state authority. Each investigation must be initiated promptly; however, the properly constituted state authority must be an agency *other than* the agency, institution or facility involved in the acts or omissions, if the report of child abuse and neglect involves the acts or omissions of a public or private agency or other institution or facility. In addition, a state must provide, upon a finding of abuse or neglect, for immediate action to protect the health and welfare of the abused or neglected child and any other children who may be in danger in the same home.

3. In connection with the enforcement of child abuse and neglect laws and the reporting of suspected instances of child abuse and neglect, a state must demonstrate that there are, in effect, administrative procedures, trained personnel, training procedures, institutional and other facilities and multi-disciplinary programs and services sufficient to assure that the state can deal effectively and efficiently with child abuse and neglect. At a minimum this must include a provision for the receipt, investigation and verification of reports; a provision for the determination of treatment or ameliorative social service and medical needs; provision of such services; and, where necessary, recourse to the criminal or juvenile court.

4. A state must have, in effect, a child abuse and neglect law that provides immunity for all persons who in good faith report instances of child abuse or neglect (immunity to apply to both civil and criminal prosecution that might arise from such reporting).

5. A state must preserve the confidentiality of all records concerning reports of child abuse and neglect by having, in effect, a law that (a) makes such records confidential and (b) makes any person who permits or encourages the unauthorized dissemination of such records or their contents guilty of a crime.

6. A state must establish cooperation among law enforcement officials, courts of competent jurisdiction and all appropriate state agencies providing human services for the prevention, treatment and identification of child abuse and neglect.

7. In every case involving an abused or neglected child that results in a judicial proceeding, a state must provide that a guardian *ad litem* be appointed to represent the child in such proceedings.

8. A state must provide that the aggregate of state support for programs or projects related to child abuse and neglect shall not be reduced below the level provided during the fiscal year 1973.

9. A state must provide for public dissemination of information on the problems of child abuse and neglect, as well as the facilities and the prevention and treatment methods available to combat child abuse and neglect.

10. A state, to the extent feasible, must insure that parental organizations combating child abuse and neglect receive preferential treatment.

Clearly, a state's child abuse and neglect reporting statute cannot by itself meet all the requirements outlined in Public Law 93-247. To the extent possible, and to the extent that it is required, the following model Act meets the requirements of Public Law 93-247.

For a thorough discussion of all the requirements and how they can be met, please refer to the Federal Register, Vol. 39, No. 245 (Thursday, December 19, 1974).

MODEL LEGISLATION

SECTION I. PURPOSE

It is the purpose of this Act, through the complete reporting of child abuse, sexual abuse and neglect, to protect the best interests of the child, to offer protective services in order to prevent any further harm to the child or any other children living in the home, to stabilize the home environment, to preserve family life whenever possible and to encourage cooperation among the states in dealing with the problems of child abuse and neglect.

Alternative: The public policy of this state is to protect children whose health and welfare may be adversely affected through injury and neglect; to strengthen the family and to make the home safe for children by enhancing the parental capacity for good care; to provide a temporary or permanent nurturing and safe environment when necessary; and for these purposes to require the reporting of child abuse, investigation of such reports by a social agency and provision of services where needed by the child and family. [Based on Conn. Gen. Stats. Ann. §17-38(a)(1973)]

Comments: The purpose of the Act is preventive and curative, not punitive. It is intended to encourage reporting within a state and cooperation among the states in order to identify child abuse as quickly as possible. With the identification of a specific instance of

child abuse, the state's resources can be brought to bear in an effort to protect the child's health, to prevent abuse from occurring again and to keep the family unit intact whenever possible.

Keeping the family unit intact, however, is not the primary purpose of the legislation. Protection of the child takes first priority. In many cases, the protection of the child's interests and keeping the family together will be one and the same, and need not be mutually exclusive. Unfortunately, in some situations they are. In these cases, the two should be separated and primary emphasis should be placed on the welfare of the child.

SECTION II. DEFINITIONS

When used in this Act, unless the specific content indicates otherwise:

1. "Child" means any person under 18 years of age.
2. "Abuse" means any physical or mental injury inflicted on a child other than by accidental means, or an injury at variance with the history given of it.
3. "Neglect" means a failure to provide, or a refusal to provide when financially able, by those legally responsible for the care and maintenance of the child; the proper or necessary support; education, as required by law; or medical, surgical or any other care necessary for the child's well-being.
4. "Institutional child abuse and neglect" means situations of child abuse or neglect where the person responsible for the child's welfare is in a foster home, residential home or other public or private institution or agency.
5. "State department" means the state department responsible for the supervision or administration of child protective services at the local level.
6. "Child protective agency" means the agency designated by state law with prime child protective responsibility, including the receipt, investigation, treatment or referral of reports of

known or suspected child abuse or neglect.

7. "Unfounded report" means any report made pursuant to this act that is not supported by some credible evidence.
8. "A person responsible for a child's welfare" includes the child's parent, guardian or other person responsible for the child's welfare, whether the child is in his home, a relative's home, a foster care home or a residential institution.
9. "Subject of the report" means any child reported under this Act, or his or her parent, guardian or other person responsible for his welfare.

Alternative 1: Abuse means any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, sexual molestation, burns, fracture of any bone, subdural hematoma, soft-tissue swelling, a failure-to-thrive or death, and such condition or death is not justifiably explained, or the history given concerning such condition or death is at variance with the degree or type of such condition or death, or the circumstances indicate that such condition or death may not be the product of an accidental occurrence. [Based on Colo. Rev. Stats. Ann., §19-10-101(1)(1973)]

Alternative 2: "Definition for identification of children for reporting purposes." A child under the age of 18, who is suffering from physical injury (inflicted upon him by other than accidental means), or sexual abuse, or malnutrition, or suffering from physical or emotional harm

or substantial risk thereof by reason of neglect. Reporting of neglect shall take into account the accepted child-rearing practices of the culture of which he or she is part. [Clinical Proceedings, Children's Hospital, National Medical Center, Vol. 30, No. 2, February 1974 -- definition suggested at the Conference on the Battered Child, sponsored by the D.C. Chapter of the American Academy of Pediatrics and Group Health Association, Inc., Washington, D.C., Sheraton Park Hotel, June 7, 1973.]

Comments: This definition of "a child," taken from Maryland legislation, is relatively uniform across the country. Washington State, however, noting that the purpose of an act of this type is to protect those persons who cannot protect themselves, has defined a child as: "Any person under the age of 18 years and shall include mentally retarded persons, regardless of age." [Rev. Wash. Code Ann., §26.44.020(6)(1974)] A definition that specifically includes the mentally retarded is preferable, although it greatly expands the scope of the bill and although a generally agreed-upon definition of mentally retarded may be difficult to achieve. For other definitions of a child, incorporating a mental or physical disability, the statutes of Delaware, Nebraska and Ohio are especially helpful. As defined, "abuse" has a broad context. It refers to any physical injury not accidental in nature. The word "serious," which in many states precedes "physical injury," has been purposely deleted because legislation designed to provide an

effective child abuse program should be concerned with *all* injuries, not just serious ones. In many cases, simple physical injuries later become the serious physical injuries and, by that time, it is too late to intervene and offer adequate assistance.

The definition also refers to mental injury. This connotes emotional abuse or emotional neglect. A number of state statutes define abuse to include emotional abuse. Statutes in this category include those in Delaware, Louisiana, Kansas, Tennessee and Texas. Although many state statutes refer to serious physical injury resulting in emotional harm, or serious mental abuse resulting in physical injury, here, mental injury is not defined to include physical injury. The definition as used here is intended to mean pure emotional abuse. An "injury at variance with the history given of it" is included because parents who have seriously injured their children often propose explanations that do not adequately explain the injury.

"Neglect" includes the willful commission or negligent omission of some act by the parent. This is intended to cover situations in which the child is not physically or mentally abused, but which, if unchecked, present as great a danger to the child. This is not intended to cover those situations in which there is a need, but the need springs from the family's financial inabilities. The context of neglect is broad enough to cover the failure-to-thrive, abandonment and starvation clauses noted specifically in some state statutes for neglect.

This Act recognizes that children are often abused or neglected by the public and private agencies and institutions meant to serve them. The term "institutional child abuse and neglect" is intended to cover those situations in which a child is abused or neglected in some institutional setting.

The definition of an "unfounded report" is intended to solve the problem of the malicious, bad-faith report. In too many cases, reports of suspected abuse with no credible evidence to justify them are listed in a central registry. It is hoped that by labeling reports as founded or unfounded, reports with no credible evidence to support them will be expunged from the central registry records.

SECTION III. PERSONS MANDATED TO REPORT SUSPECTED ABUSE, SEXUAL ABUSE AND NEGLECT

When any physician, resident, intern, hospital personnel engaged in the admission, examination, care or treatment of persons, nurse, osteopath, chiropractor, podiatrist, medical examiner or coroner, dentist, optometrist, or any other medical or mental health professional, Christian Science practitioner, religious healer, school teacher or other school official or pupil personnel, social service worker, day care worker or other child care or foster care worker, or any peace officer or law enforcement official, has reasonable cause to suspect that a child has been subjected to abuse, sexual abuse or neglect, or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect, he shall immediately report it or cause a report to be made.

Whenever such person is required to report under this Act in his capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, he shall immediately notify the person in charge of such institution, school, facility or agency, or his designated agent, who shall then also become responsible to report or cause reports to be made. However, nothing in this section or Act is intended to require more than one report from any such institution, school or agency; but neither is it intended to prevent

individuals from reporting on their own behalf.

In addition to those persons and officials specifically required to report suspected child abuse, sexual abuse and neglect, any other person may make a report if such person has reasonable cause to suspect that a child has been abused or neglected or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.

Comments: Persons mandated to report. The basic format for Section III is drawn from the New York statute, and the provision for the report of conditions or circumstances that would reasonably result in abuse is drawn from the Colorado law.

The number of individuals required to report under this section is extensive. Section III identifies all those persons who have contact with young children and who are able to identify suspected injuries to children at the earliest possible point in time. The key to any good piece of legislation pertaining to child abuse and neglect is to provide a means for identifying the child abuse and neglect case as quickly as possible.

Sexual abuse has not been specifically defined in Section III. It is expected that state courts would interpret sexual abuse or sexual molestation to include sexual physical assualts, consensual sexual activity with a minor and nonphysical sexual assaults such as exhibitionism. Connecticut's children's code has been amended to allow

hospitals, physicians and clinics to examine and treat a minor for venereal disease without his parents' consent; examination and treatment are confidential unless the minor is under 12 years of age and then a report is required under the statute mandating reports of suspected child abuse. The assumption is that sexual contact with a child under 12, with or without the consent of the child, constitutes abuse and should be reported as such.

Finally, this section provides for voluntary reports by any person who has reasonable cause to suspect abuse or neglect. This is to encourage all persons to report suspected abuse and neglect and to make certain that such reports will be identified and processed. At the same time, it insures that individuals making voluntary reports will not be subjected to criminal liability for a failure to report. Only those individuals specifically required to report are criminally and civilly liable for a failure to do so.

SECTION IV. MANDATORY REPORTING TO A MEDICAL EXAMINER OR A CORONER AND A POST-MORTEM INVESTIGATION

Any person or official required under Section III of this Act to report cases of suspected child abuse, sexual abuse or neglect, including workers of the local child protective services, who has reasonable cause to suspect that a child has died as a result of child abuse, sexual abuse or neglect, shall report that fact to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall report his findings to the police, the appropriate district attorney, the local child protective service agency and, if the institution making a report is a hospital, to the hospital.

Comments: Until a few years ago, coroners and medical examiners were not routinely required to report suspected incidences of child abuse, sexual abuse or neglect that resulted in a death. As a result, a number of child abuse deaths were never noted or reported. While it is axiomatic that a child who is dead is no longer in danger, one of the primary purposes of child abuse legislation is to protect *all* children within the same home. To accomplish this, deaths resulting from suspected child abuse should be reported by the coroner or medical examiner and the same procedure should be followed as if the child were still alive. It should be noted, however, that Section IV requires reports to a medical examiner or a coroner when someone other than a medical examiner or coroner suspects that a child has died as a

result of child abuse, sexual abuse or neglect. The medical examiner or coroner is required to accept the report, make an investigation and report his findings to the police, district attorney and the welfare department.

SECTION V. COLOR PHOTOGRAPHS AND X-RAYS

Any person required to report cases of child abuse, sexual abuse and neglect, may take or cause to be taken, at public expense, color photographs of the areas of trauma visible on a child and, if medically indicated, cause to be performed radiological examinations of the child. Any photographs or x-rays taken shall be sent to the mandated receiving agency as soon as possible. Whenever such person is required to report under this Act, in his capacity as a member of the staff of a medical or other private or public institution, school, facility or agency, he shall immediately notify the person in charge of such institution, school, facility or agency, or his designated delegate, who shall then take or cause to be taken, at public expense, color photographs of physical trauma and shall, if medically indicated, cause to be performed a radiological examination of the child.

Comments: This section is intended to provide data to augment the department's file pertaining to child abuse. It is assumed that such photographs would become a portion of the medical file and thus could be used in court proceedings. This section specifically states that color photographs *may* be taken of the physical trauma visible on a child. Legally, this means that individuals mandated to report abuse do not need parental permission or release to take the necessary photographs. The language of this section specifically states that any person required to report may take color photographs, but when such

person is a member of a staff of a hospital or any other private or public institution, school, facility or agency, he *shall* notify the person who *shall* take such color photographs.

SECTION VI. PROTECTIVE CUSTODY

A police officer or law enforcement official may take a child into protective custody, and any person in charge of a hospital or similar institution or any physician treating a child may keep that child in his custody without the consent of the parent or the guardian, whether or not additional medical treatment is required, if the circumstances or conditions of the child are such that continuing in his place of residence or in the care or custody of the parent, guardian, custodian or other person responsible for the child's care presents an imminent danger to that child's life or health.

Any person taking a child into protective custody shall immediately notify the child protective services and the juvenile court and shall make every reasonable effort to inform the parent or the person responsible for the child's welfare of the place or facility to which the child has been brought. The place the child shall be taken to shall be designated for that purpose by the juvenile court or the local child protective service. It may include a hospital if the child is or will be presently admitted to the hospital. The local child protective service shall be responsible for attempting to avoid placement of a child in a foster home or an institution, whenever possible and appropriate. The local child protective service shall commence child protective proceedings in the juvenile court at the next regular weekday session of the court or, at that time, recommend to the court that a petition not be filed and that the child be returned

to his parents or other person responsible for his welfare pending further action.

Comments: The right of a physician or the head of a hospital, clinic or other similar institution to retain custody of a child in his care is beginning to gain wide acceptance. The right to retain custody under this section is permitted even if there is no immediate need for additional medical treatment and even if the parents object to the retention of custody. The requirement is that there exists some immediate danger to the child's life or health. With the addition of the word "health," the minimum requirement is simply that if the child were released, there would be a possibility that the child might suffer further injury. There is no requirement that the injury be "serious."

This section is intended to give doctors, hospitals, clinics and other similar institutions more flexibility in dealing with what they believe may be a potentially explosive and dangerous home environment for a child. This section is particularly pertinent in those situations in which it proves difficult to obtain an immediate police hold or court order. In order to make this section as palatable as possible, it requires that the parents be notified as quickly as possible under the circumstances, and that the juvenile court be notified at the next regular weekday session.

SECTION VII. REPORTING PROCEDURES

1. Reports of child abuse, sexual abuse or neglect made pursuant to this Act shall be made immediately by telephone and shall be followed by a written report within 48 hours if so requested by the receiving agency. The receiving agency shall forward immediately a copy of this report to the statewide central registry on forms supplied by such registry.

2. All initial oral reports shall be made by telephone to a state center established by this Act. The state department shall establish and shall maintain in the state center a 24-hour, 7-day-a-week, toll-free telephone number to receive such calls. If the initial report is made to some local service, the local service shall forward such information immediately to the state center. When reports are made directly to the state center, they shall be immediately transferred to the appropriate local service.

3. To the extent possible, such reports shall include the following information: the names and addresses of the child and his parents or other persons responsible for his care; the child's age, sex and race; the nature and the extent of the child's injuries, neglect or sexual abuse, including any evidence of previous injuries, sexual abuse or neglect to the child or any other child in the same home; the name and address of the person responsible for the injuries, sexual abuse or neglect; the family composition; the source of the report, including the name of the person making the report, his occupation and his

address; any actions taken by the reporting source, including the taking of x-rays or color photographs, temporary custody or notification of the coroner or medical examiner; and any other information that the person making the report believes may further the purposes of this Act.

4. A copy of this report shall immediately be made available to the appropriate law enforcement agency, the district attorney or the coroner or medical examiner's office for their consideration.

5. A written report from persons or officials required by this Act to report shall be admissible in evidence in any proceeding relating to child abuse, sexual abuse or neglect.

6. Reports involving known or suspected institutional child abuse, sexual abuse or neglect shall be made and received as all other reports made pursuant to this Act. However, the investigation of such reports shall be the responsibility of the agency designated to fulfill this purpose by an approved local plan for child protective services or by an agency designated by the state department.

Comments: The intent of this section is to require immediate reports so that appropriate and ameliorative action can be offered. Furthermore, this section established one statewide, 24-hour-a-day hotline for child abuse, sexual abuse and neglect reporting. The state department is responsible for the creation and maintenance of a toll-free, child abuse hotline and must establish and maintain a state center to coordinate all state activities. While local communities will be encouraged

to develop their own child abuse plan, there must be some agency ultimately responsible for the coordination of all child abuse and neglect programs. This is the function of the state center under the auspices of the state department.

This suggested legislation provides for a written report at the discretion of the receiving agency. Some states require an immediate oral report to the receiving agency, followed by a written report within some specified time period. Other states simply require an oral report. It is suggested that the requirements of a written report in *all* cases of suspected abuse, sexual abuse and neglect, may have a chilling effect on reporting. The primary purpose of the reporting statute is to identify the child in peril as quickly as possible. Anything that might compromise this identification process should be thoroughly analyzed.

The content of the initial report is extensive, as it is in a number of states, such as Connecticut, Oregon, West Virginia and New York. The purpose is to identify the child in danger, any other children in the same home who might also be in danger, the probable abuser and the name of the reporter. The information is then utilized to initiate the investigation, to cross-index in the central registry and to begin appropriate legal proceedings where necessary.

Subsection 4 of this section provides that copies of the initial report will be "made available" to the appropriate law enforcement agency, local district attorney or coroner. It does not require that a

report be transferred immediately to the police department, district attorney or coroner. Reports of physical abuse may be of concern to the district attorney; reports of neglect will not. Reports of suspected abuse leading to death will be of interest to the coroner, but simple reports of abuse will not. In any event, reports are made available as appropriate. Each community will probably set up its own procedures for transferring information concerning child abuse, sexual abuse and neglect. The actual procedures utilized for the transfer and the circumstances under which a transfer takes place are left to the agencies themselves.

Subsection 6 of this section insures that the agency investigating the report is not the same agency that has been reported as abusing the child.

SECTION VIII. IMMUNITY FROM LIABILITY

Any person, official or institution participating in good faith in any act permitted or required by this Act shall be immune from any civil or criminal liability that otherwise might result by reasons of such actions.

Comments: To encourage reporting, this section protects from civil and criminal liability *any* person who makes a report. At the present time, every state offers some form of immunity from liability under mandatory reporting statutes. This section provides immunity for individuals required or permitted to report, required or permitted to take color photographs or x-rays or permitted to assume temporary custody. The immunity extends to *any* action permitted or required under this Act.

Immunity is granted only to those persons acting in good faith (i.e., without a malicious purpose). Some states presume the good faith of actors making a report or performing an activity under the mandatory reporting statute. For all practical purposes, however, anyone bringing suit against a reporter must show that the reporter acted in bad faith. If the person bringing suit must demonstrate bad faith on the part of the reporter, there is already a presumption of good faith. It was felt that inclusion of a phrase "presuming good faith" would simply be redundant and was omitted.

SECTION IX. ABROGATION OF PRIVILEGED COMMUNICATIONS

The privileged quality of communications between husband and wife and between any professional person and his patient or his client, except that between attorney and client, is hereby abrogated in situations involving known or suspected child abuse, sexual abuse or neglect. Such privileged communications, excluding those of attorney and client, shall not constitute grounds for failure to report as required or permitted by this Act, to cooperate with the child protective service in its activities pursuant to this Act, or to give or accept evidence in any judicial proceeding relating to child abuse, sexual abuse or neglect.

Comments: This section abrogates the privileged status of confidential communications for purposes of reporting or participating in any proceeding relating to child abuse, sexual abuse or neglect. In most cases of child abuse, the only eyewitnesses are the parents and the child, and the child is either too young or too intimidated to testify. The parent who actually abused the child cannot, of course, be forced to testify against his own interests. Rather than force the county attorney to rely on purely circumstantial evidence to prove child abuse, this section would allow the spouse who actually witnessed the attack to testify.

SECTION X. FAILURE TO REPORT

1. Any person, official or institution required by this Act to report a case of known or suspected child abuse, sexual abuse or neglect, or to perform any other act, who knowingly fails to do so or knowingly prevents another person acting reasonably from doing so, shall be guilty of a misdemeanor.

2. Any person, official or institution required by this Act to report a case of known or suspected child abuse, sexual abuse or neglect, or to perform any other act, who knowingly fails to do so or knowingly prevents another person acting reasonably from doing so, shall be civilly liable for the damages proximately caused by such a failure.

Comments: Under Section X, individuals who are required to report and who knowingly fail to do so become civilly and criminally liable. Subsection 1 is little more than a slap on the wrist, a criminal sanction levied by the state for a failure to report. Subsection 2 however, clears the way for a civil suit on behalf of the child for damages caused by the knowing failure to report. Previously, a suit for damages on behalf of the injured child was via the writ of "negligence per se," which often proved complicated and lengthy. Today, 33 states provide criminal sanctions for a failure to report a case of suspected child abuse, sexual molestation or neglect.

In task force discussions, several members expressed reservations about recommending penalties for a failure to report, arguing that the

establishment of liability for failure to report might tend to result in excess reporting by those fearing possible legal action. They felt that many reports might be motivated more by a fear of legal incrimination and penalty than by a real concern for the welfare of the child. It was also felt that the establishment of penalties for failure to report might instill a fear of becoming involved at all, and that a legal penalty for failure to report might foster the inclination toward minding one's own business, thus defeating the intent of the legislation. Instead of establishing penalties, it was felt that efforts should be directed at breaking down the resistance to reporting. This could best be achieved by persistent educational efforts to sensitize the public as to the seriousness of the problem and the importance of reporting.

On the other hand, the task force expressed equally strong feelings that penalties for a failure to report would not result in excess reporting and that there was no substantial evidence to support the arguments against penalties. It was felt that inclusion of a penalty for failure to report would not increase the resistance to reporting, but would have the opposite effect. One doubt expressed from a pragmatic point of view was whether anyone would be *criminally* prosecuted for a failure to report in a one-time situation, because the diagnosis is simply too subjective. There have been cases where pediatricians have been sued *civilly* for a failure to report; in these cases, children were seen more than once and abuse was readily apparent.

After weighing the arguments pro and con, the task force decided to include in the suggested legislation the section that provides for penalties for failure to report, but also to emphasize in the accompanying comments the significant differences of opinion on this question.

There was no disagreement, however, on the need to educate the public about the extent of the problem and what should be done in the event that individuals do become involved in reporting cases of child abuse, sexual abuse and neglect.

SECTION XI. CHILD PROTECTIVE SERVICES

1. The state department shall establish or designate in every county (or comparable political subdivision) a local child protective service to perform the duties and functions set forth in this Act.

2. Except in cases involving institutional abuse or cases in which police investigation also appears appropriate, the child protective service shall be the sole public agency responsible for receiving, investigating or arranging for investigation, and coordinating the investigation of all reports of known or suspected child abuse, sexual abuse or neglect. In accordance with the local plan for child protective services, it shall provide protective services to prevent further abuse, sexual abuse or neglect of children and provide for or arrange for and coordinate and monitor the provision of those services necessary to insure the safety of children. The local child protective service shall have a qualified staff sufficient to fulfill the purposes of this Act and shall be organized to maximize the continuity of responsibility, care and service of individual workers for individual children and families.

3. Each local child protective service shall:

   A. Receive or arrange for the receipt of all reports of known or suspected child abuse, sexual abuse or neglect on a 24-hour, 7-day-a-week basis.

   B. Provide or arrange for emergency children's services to be available at all times.

C. Within 24 hours of notification of a suspected case of child abuse, sexual abuse or neglect, commence or cause to be commenced a thorough investigation of the report.

4. A. The investigation shall include an evaluation of the environment of the child named in the report and any other children that may be in the same home; a determination of the risk to those children if they continue to remain in the home; a determination of the nature, extent and cause of any condition enumerated in the initial report of child abuse, sexual abuse or neglect; and the name, age and condition of any other children living in the same home.

B. Upon completion of the investigation, where appropriate, the local child protective service shall offer services to the child or to the family.

C. If at any time before the investigation has been completed, the opinion of the investigators is that immediate removal is necessary to protect the child from further abuse, sexual abuse or neglect, the juvenile court or the district court with juvenile jurisdiction shall be so notified.

D. In those cases in which the local child protective service determines that the best interests of the child require juvenile court action, the local child protective service shall initiate the appropriate legal proceeding, and shall

assist the juvenile court during all stages of the proceeding in accordance with the provisions of this Act.

E. The local child protective service shall be responsible for providing, directing or coordinating the appropriate and timely delivery of services to abused children and their families, including services to those responsible for the child's care.

5. The local child protective service shall complete and forward to the state central registry, on forms supplied by such state central registry:

A. Within seven days of the receipt of a report of known or suspected child abuse, sexual abuse or neglect, a preliminary report of the investigation made by the local child protective service, including an evaluation of the situation, potential danger to the child or children and actions taken or completed.

B. Within 90 days of receipt of the initial report of known or suspected child abuse, sexual abuse or neglect, a progress report, including a determination by the local child protective service that the report is founded or unfounded, a plan for rehabilitative or ameliorative treatment, services offered and accepted or refused, and the present status of the case.

C. Within seven days of termination of a case, a report

indicating the final disposition.

6. To carry out the purposes of this Act, the local child protective service may request and shall receive from departments, boards, bureaus or other agencies of the state or any of its political subdivisions or from any duly authorized agency or any other agency providing services under the local child protective service plan, such cooperation, assistance and information as will enable it to fulfill its responsibilities.

Comments: This section provides for the establishment of a child protective service to fulfill child abuse and neglect functions. Although this Act requires that a child protective service be established in each county, it is recognized that in predominately rural states this may be impractical or impossible. It is therefore suggested that in rural states one child protective service be established for a number of continguous counties. The purpose of the child protective service is to coordinate all aspects of the child abuse case, including the receipt of reports, the investigation of reports, court action and treatment. Each county child protective service must receive reports, initiate an investigation within 24 hours, offer appropriate services to the child and family and, where necessary, petition the juvenile court on behalf of the injured child.

In an attempt to coordinate and evaluate progress, each child protective service must complete three reports as the case unfolds. The

first is a *preliminary report* indicating what action has been taken once a report of known or suspected child abuse, sexual abuse or neglect has been received. The second is a *progress report* indicating whether or not the original report has proven to be founded or unfounded, what treatment plan has been completed for the child and his family and what services have been offered and accepted to date. The third is a *termination report* indicating the eventual disposition of the case. All reports are forwarded to the state central registry on forms provided by the state central registry.

It should be noted that the child protective service is responsible for the receipt and investigation of reports and for treatment. If the local child protective service cannot investigate the report or offer treatment, it may arrange for another local agency to provide the service. The primary responsibility of the child protective service is not to offer services, but to insure that all requirements of this Act are met and to coordinate all related activities.

SECTION XII. CHILD PROTECTION TEAM AND LOCAL PLAN FOR CHILD PROTECTION

1. The local child protective service shall convene a community-wide, multidisciplinary child protection team to be known as The Child Protection Team. The team shall be comprised of the director of the local child protective service or his representative, who shall serve as team coordinator; a representative of the local law enforcement agency, appointed by the local law enforcement agency; a representative of the juvenile court, appointed by the court; and, to the extent possible, a physician, a lawyer, a representative of mental health or public health and one or more representatives of the lay community, to be appointed by the team coordinator. The team shall be composed of no less than three and no more than nine members.

The team coordinator shall be responsible for supplying the team with copies of the initial report, the preliminary report, the progress report and the termination report in every case of child abuse, sexual abuse and neglect. The coordinator shall also supply the team with any other information he considers germane to its deliberations. The Child Protection Team shall meet once a week or within a week from the date a report is made of suspected abuse, known child abuse, sexual abuse or neglect. The team shall serve as a diagnostic and prognostic service for the child protective service. However, the Child Protection Team may, after an evaluation of the reports, file a petition in the juvenile court on behalf of the subject child if it believes this would best serve the interests of the child. If the Child Protection

Team files a petition in the juvenile court on behalf of the child, it shall notify the guardian *ad litem* in writing of its reason for initiating a petition, its suggested prognosis and its suggested treatment program for the abused child and his family.

2. After consultation with local law enforcement agencies, the juvenile court, parental organizations and other appropriate public and private agencies and societies, including social service, medical, mental health and legal agencies or societies, each local Child Protection Team shall prepare annually a local plan for the provision of child protective services.

A. The local plan shall describe local implementation of this Act, including the organization, staffing, method of operations and financing of the child protective service, as well as provisions made for the purchase of services and interagency cooperation. The local plan shall also describe programs in effect and programs planned in connection with the implementation of this Act. The plan shall also describe administrative procedures in effect or planned; personnel trained in child abuse, sexual abuse or neglect; training programs in existence or planned; and institutions and multidisciplinary programs in existence or planned. At a minimum, local services must include provision for the receipt, investigation and verification of reports; provision for the determination of treatment or

ameliorative social service needs; provision for such services; when necessary, resort to criminal or juvenile courts; and provision for monitoring and planning of the entire process.

B. The local plan shall specify the terms and conditions under which the child protective service may purchase and utilize services of any public or private agency to carry out its responsibilities under this Act. When services are purchased by the local child protective service pursuant to this section, they shall be reimbursed by the state to the locality or the agency in the same manner and to the same extent as if the services were provided directly by the local child protective service.

C. The local plan shall be made available to the public for review and comment at least 60 days before a public hearing on the plan. A public hearing shall be held at least 30 days before the plan is to be submitted to the state department. The date of submission to the state department shall be determined by the state department to stagger the department's receipt of such plans regularly throughout the year.

D. The local plan may not take effect until at least 60 days after its submission to the state department. Within 30 days of its submission, the state department shall certify

whether the local plan fulfills the purposes and requirements of this Act. If it certifies that the local plan does not do so, it shall state the reasons therefore, and the team shall have 30 days to submit an amended plan. The state department shall then have 30 days to certify whether this amended plan fulfills the purposes and requirements of this Act. If it again certifies that the plan does not do so, the local child protective service shall have an additional 30 days to submit an amended plan, which the state department shall have 30 days to certify, whether or not the amended plan fulfills the purposes and meets the requirements of this Act. Anytime thereafter, the state department may withhold state reimbursement for all or part of the county's social service activities. Decisions of the state department under this section shall be reviewable in the form and manner prescribed by state law.

Comments: This section recognizes that child abuse is a multidimensional problem. The identification, prevention and treatment of child abuse, sexual abuse and neglect are part medical pathology, part psychiatry, part legal and a bit social work. The creation of a multidisciplinary Child Protection Team should provide enough collective expertise from the relevant professions to provide an adequate diagnosis and prognosis, and provide and coordinate an adequate treatment plan for the

abused child and his family. The Child Protection Team can be utilized as a sounding board for the local child protective service, but it is also more than a tool for the local agency. The team serves as a monitoring device and a safety valve as well. If the local protective service, after investigation, decides that a case is not one of child abuse, sexual abuse or neglect, and decides not to proceed to the court, the team can re-evaluate the case and independently file a petition on behalf of the child.

Furthermore, the treatment aspect of child abuse, sexual abuse and neglect is a multifaceted problem. Many service organizations that could be utilized in cases of child abuse are currently not involved (public health, mental health, school social workers, school nurses, public health nurses, school counselors, Red Cross, Salvation Army, to name a few). The Child Protection Team has the option, in drafting a local plan and in suggesting treatment programs for a particular case, of calling upon these various service organizations.

The concept of multidisciplinary Child Protection Teams or consultation boards is not new. There are currently hundreds of hospital-based teams, community teams and Suspected Child Abuse and Neglect (S.C.A.N.) organizations in existence. Massachusetts provides for the establishment of "consultation and advisory boards" throughout the state.[Ann. Laws of Mass., §119-51(D)(1974)] Colorado requires that all counties with reports of 50 or more cases of child abuse, sexual abuse and neglect create a child protection team for the diagnosis,

prognosis and treatment of child abuse, sexual abuse and neglect.[Colo. House Bill 1482, June 1975]

This section also recognizes that counties may vary in population, population makeup, services and treatment programs. Child abuse is not only a multidisciplinary problem, it is a community problem. By requiring the local child protection team to draft a local plan in consultation with other local agencies, community weaknesses will be minimized and community strengths optimized. If child abuse is ever to be identified, treated and prevented effectively, it must be a total community effort. This section attempts to bring together all community service organizations to draft a cooperative community plan in order to meet the requirements of Public Law 93-247. The requirement of a comprehensive community planning effort is not unique. It will be a condition precedent to federal funding under Title XX of the Social Security Act, and it is currently in existence in New York.[McKinney's Consolidated Laws of New York, Social Services Laws, §423 (1975)]

SECTION XIII. THE STATEWIDE CHILD PROTECTION CENTER AND THE CENTRAL REGISTRY

1. The state department shall establish and maintain a single statewide facility, to be known as the "Statewide Child Protection Center," which shall be a separate organizational unit administered within the state department, with qualified staff and resources sufficient to fulfill the purposes and functions assigned to it by this Act.

2. The purposes of the Statewide Child Protection Center shall be to assign and monitor initial child protection responsibility; to assist in the diagnosis of child abuse, sexual abuse and neglect; to coordinate and monitor referrals of known or suspected child abuse, sexual abuse and neglect; to measure the effectiveness of existing child protection programs and facilitate research, planning and program development; and to establish and monitor a statewide central registry for child abuse, sexual abuse and neglect.

3. The state department shall establish and maintain within the Statewide Child Protection Center a statewide toll-free number, 24 hours a day, 7 days a week, which all persons may use to report known or suspected cases of child abuse, sexual abuse or neglect.

4. A. The state department shall establish and maintain within the Statewide Child Protection Center a central registry for child abuse, sexual abuse and neglect.

B. Through the recording of initial reports, preliminary

reports, progress reports and termination reports of child abuse, sexual abuse and neglect, the central registry may be utilized to identify prior reports of known or suspected child abuse, sexual abuse, or neglect involving the same child or the same family; to continuously monitor the status of all child protective cases involving child abuse, sexual abuse and neglect; and to develop statistical and other materials for research.

C. All initial reports, either written or oral, of child abuse, sexual abuse or neglect made to any agency shall be immediately relayed to the Statewide Child Protection Center, which shall cause them to be entered into the central registry. As preliminary reports, progress reports and termination reports become available, they shall be transferred to the Statewide Child Protection Center, which shall cause them to be entered into the central registry. The registry shall also include the names, addresses and professional status of any persons requesting and receiving information from the central registry.

D. Immediately upon receipt of a report of known or suspected child abuse, sexual abuse or neglect to the Statewide Child Protection Center, the central registry shall be utilized to determine if there is any prior record con-

cerning the same child or the same family. The Statewide Child Protection Center shall immediately notify the local child protective service of the report of known or suspected child abuse, sexual abuse or neglect, and at the same time shall indicate to the local child protective service whether there is a previous report of child abuse, sexual abuse or nelgect concerning the same child or the same family.

E. All reports of child abuse, sexual abuse or neglect contained within the central registry shall be classified in one of three categories: under investigation, founded or closed. All initial reports of suspected child abuse, sexual abuse and neglect, shall be classified as "under investigation." Upon receipt of the preliminary report or the progress report from the local child protective services, the "under investigation" report shall be classified as "founded" or "unfounded." All cases classified as "unfounded" shall be immediately expunged. After the child who is the subject of the report reaches the age of 18 years, his record shall be classified as closed and shall be sealed. Access to a closed record shall only be permitted if a sibling or offspring of the child is reported as a suspected victim of child abuse, sexual abuse or neglect. All closed records shall be automatically ex-

punged seven years from the date the record was closed.

F. At any time and in any case, the Statewide Child Protection Center may amend or remove from the central registry any record upon good cause shown and upon notice to the subjects of the report.

G. At any time a subject of a report may receive, upon written request, a copy of all information contained in the central registry that pertains to him, provided, however, that the registrar is authorized to prohibit the release of any data that would identify the person who made the initial report or any person who cooperated in a subsequent investigation.

H. At any time after the completion of the investigation, but in no event later than 60 days after receipt of the report, at which time this Act contemplates that the investigation be completed, a subject of the report may request the state department to amend or remove the record of the report from the registry. If the department refuses or fails to act within 30 days of such request, the subject shall have the right to a fair hearing within the department. Records shall not be maintained and shall be removed if they are inaccurate or are maintained in a manner inconsistent with this Act. In any hearing initiated by the subject of a report, the burden of proof shall be on the state department and the

local child protective service. However, in any case in which the juvenile court or criminal court has found that there was child abuse, sexual abuse or neglect, this shall be *prima facie* evidence that the report is founded. All hearings must be held within a reasonable time after the request for a hearing has been made.

I. The central registry within the Statewide Child Protection Center shall be the only registry within the state.

Comments: Section XIII creates one statewide facility to fulfill the requirements and the purposes of this Act. The "Center" houses both the toll-free, child abuse hotline and the central registry.

The child abuse hotline, which is operational 24 hours a day, 7 days a week, throughout the year, serves two purposes: to report suspected cases of child abuse, sexual abuse and neglect, and to determine, in conjunction with the central registry, whether a particular child and his family have been involved previously in a case of child abuse, sexual abuse or neglect. Section XIII should be read in conjunction with the following section to determine who has access to information contained within the central registry.

If a report of suspected child abuse, sexual abuse or neglect is reported on the hotline, the operator must take the caller's name, the child's name and the parents' names and address. The operator may then cross-reference the child's name and the parents' names in the central

to determine if there is any previous report concerning the same child or the same family. The initial report and any collateral information in the central registry are then relayed immediately to the appropriate child protective service. It is then the responsibility of the local child protective service to investigate the case and take any steps necessary to protect the children under Section XI, §§2 of this Act.

All initial reports of child abuse, sexual abuse or neglect are automatically entered into the central registry as reports "under investigation." When the preliminary report or progress report is received from the local child protective service, an unfounded report is immediately expunged. When the child who is the subject of the report reaches 18 years of age, his record is sealed and marked "closed." The closed record may only be opened when a sibling or the offspring of the same child is reported as having been abused or neglected. Allowing access to a sealed record in these cases acknowledges that child abuse in many instances is passed from one generation to the next. In many cases, the child abused today becomes the abusing parent of tomorrow. In any event, all records are automatically expunged seven years from the date they were marked "closed." The central registry also records the names and addresses of any person who requests and receives information from it. Obviously, information would not be released unless the person requesting the information felt that the child had been abused or neglected. This in itself may be important information to someone investigating the case at a later date.

In an effort to limit the central registry to relevant and correct data, any subject of the report may request a fair hearing to determine if the information in the central registry is accurate and being held in a manner consistent with this Act. In these hearings the burden of proof is on the state department and the local child protective service. It should be noted, however, that reports are not to be expunged simply because there is not sufficient evidence to support a case of child abuse, sexual abuse or neglect in the juvenile or criminal court. Only unfounded or malicious reports are expunged automatically. Reports supplemented by credible evidence are left within the central registry. There would be little pragmatic value in limiting the central registry to reports of adjudicated cases.

There are currently 43 statewide child abuse registries. Thirty-three are the result of legislation, while the remaining 11 have been created by administrative fiat. Most of the provisions for this section have been drawn from the New York State statute, which provides for the most comprehensive of all central registries.

SECTION XIV. CONFIDENTIALITY OF RECORDS

1. In order to protect the rights of the child and his parents or guardian, all records concerning reports of child abuse, sexual abuse or neglect, including reports made to the department, State Child Protection Center, state central registry and local child protective services, and all records and reports generated as a result of such reports, shall be confidential except as specifically provided by this Act or other law. Any person who willfully permits, assists or encourages the release of information contained in such reports or records, including those in the central registry, to persons or agencies not permitted by this section to have access, shall be guilty of a misdemeanor.

2. No person, official or agency shall have access to such records unless for the express purposes of this Act. Such persons include:

A. A local child protective agency.

B. A police or law enforcement agency investigating a report of known or suspected child abuse, sexual abuse or neglect.

C. A physician who has before him a child he reasonably suspects may have been abused or neglected.

D. A person legally authorized to place a child in protective custody, but only when such person has before him a child he reasonably suspects may have been abused or neglected

and such person requires the information in the report or record to determine whether or not to place the child in protective custody.

E. An agency with legal responsibility or authorization to care for, treat or supervise a child who is the subject of a record or report, or other person responsible for the child's welfare.

F. Any person who is the subject of a report or, if such person is a child, the child's guardian *ad litem*, parent, guardian or other person responsible for his welfare.

G. A court, upon finding that access to such records may be necessary for the determination of an issue before it; but such access shall be limited to *in camera* inspection, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue pending before it.

H. A grand jury, upon determination that access to such records is necessary in the conduct of its official business.

I. Any appropriate state or local official responsible for administration, supervision or legislation in relation to child abuse, sexual abuse or neglect, or prevention or treatment when carrying out his official functions.

J. Any person engaged in bona fide research for a legitimate purpose, provided, however, that no information identify-

ing the subjects of the report shall be made available to the researcher unless it is absolutely essential to the research purpose, that suitable provision is made to monitor the confidentiality of the data and that the appropriate state official has given prior approval.

3. A physician or person in charge of an institution, school, facility or agency making the report shall receive upon written request a summary of the findings and action taken by the child protective service in response to the report. The amount of detail such summary shall contain will depend upon the source of the report and shall be established by regulations adopted by the department.

4. No information shall be released by the central registry unless the identity of the person or official or agency requesting it is confirmed and the data released states whether the report is under investigation, founded or sealed.

5. A person given access to the names and other identifying information concerning the subjects of the report, except the subject of the report, shall not divulge or make public such identifying information unless he is a district attorney or other law enforcement official and his purpose is to initiate court action.

6. Nothing in this section affects other state laws or procedures concerning the confidentiality of a criminal court and juvenile court system records.

Comments: Section XIV controls access to reports and records of child abuse, sexual abuse and neglect. *All* records and *all* reports are confidential, not just the data in the central registry. Any person who willfully violates this confidentiality may be held criminally liable.

Those persons given access to records and reports under this section include a local child protective service agency; a law enforcement agency; a physician or a person authorized to place a child in protective custody, but only in specified circumstances; any agency specifically authorized to care for or treat the abused or neglected child; any person who is the subject of a report; a court; a grand jury; and persons engaged in bona fide research. Persons specifically given access to records and reports under Section XIV must be currently working with the abused child or his family, and only for reasons that would further the purposes of this Act.

The subject of a report is entitled to access, but only in accordance with Section XIII of this Act. He is not entitled to data that would identify the person making the original report or persons who cooperated in any subsequent investigation. A guardian *ad litem*, appointed by the court to represent the child's interests in a child abuse, sexual abuse or neglect proceeding, is entitled to relevant records and reports.

In an attempt to foster cooperation, communication and coordination of resources, institutions, schools, facilities and agencies that make reports of child abuse, sexual abuse and neglect are entitled to pro-

gress reports on actions taken once the report has been initiated. Any information, reports or records released to persons specified in this section must be identified as being under investigation, founded or closed. Reports determined to have been unfounded are automatically expunged. Only in certain limited circumstances are "sealed records" released. Access to records under Section XIV meets the requirements of Public Law 93-247.

SECTION XV. EDUCATION AND TRAINING

Within available funding and as appropriate, the state department, the local child protective service and the local Child Protection Team shall conduct a public and professional training program with state, and local department staff, persons and officials required to report, the general public and any other appropriate persons, in order to encourage maximum reporting of known and suspected child abuse, sexual abuse and neglect, and to improve communication, cooperation and coordination among all agencies involved in the identification, prevention and treatment of child abuse, sexual abuse and neglect. To the extent possible, such training and educational programs shall include information on the extent and nature of the problem, the duties and responsibilities of persons required to report, the duties and the functions of the state department, the local departments of child services, the Statewide Child Protection Center, the central registry and local child protection teams, and therapeutic treatment programs available to abused and neglected children and their families.

Comment: Section XV requires training programs within a state for child abuse, sexual abuse and neglect. The actual guidelines and content for each program will be incorporated in each community's annual plan for child abuse, drafted by the local child protection team in conjunction with other agencies under Section XII, §§2 of this Act. The elements noted in Section XV constitute the minimum require-

ments for any plan adopted by a community. These requirements satisfy the federal guidelines.

SECTION XVI. THE GUARDIAN *AD LITEM*

In every case filed under this Act, the court shall appoint a guardian *ad litem* for the child. The guardian *ad litem* shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian pursuant to this Act. The guardian *ad litem* shall be charged with the representation of the child's best interests, and to that end shall make such further investigation as he deems necessary to ascertain the facts. He may interview witnesses, examine and cross-examine witnesses in both the adjudicatory and dispositional hearings, introduce his own witnesses, make recommendations to the court and participate in the proceedings to the degree appropriate for adequately representing the child.

Comments: This section provides a spokesman for every abused, sexually abused and neglected child. The language requiring the appointment of a guardian *ad litem* does not require that the guardian *ad litem* so appointed be an attorney. It is suggested, however, that an adequate protection of the child's interests in these cases usually necessitates the appointment of a lawyer as guardian *ad litem*. When proceedings are initiated under this Act, the appointment of the guardian *ad litem* is not discretionary with the court -- it is mandatory.

A guardian *ad litem*, by definition, is more than a lawyer; he is the guardian of the child throughout the legal proceedings, as well as an advocate for the child's long-range interests. To provide the

guardian *ad litem* with the tools necessary for accomplishing these ends, he is given access to all relevant records and reports pertaining to the suspected abuse, sexual abuse and neglect. In addition, he can make his own investigation, examine and cross-examine all witnesses and call his own witnesses. The guardian *ad litem*'s recommendations are not binding on the court. His role is akin to that of *amicus curiae*. The more precise his formulation of the problem and the more appropriate his recommendations, the more likely the court is to agree. The guardian *ad litem* is an excellent assurance that all persons with knowledge will testify, that all facts will be ferreted out for the court's determination and that all possible dispositions will be made available for consideration by the court.

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